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Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-64
Table of Allotments,) RM-8747
FM Broadcast Stations.)
(Boulder and Lafayette, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 3, 1997

Released: January 10, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making* ("Notice"), 11 FCC Rcd 3632 (1996), issued in response to a petition filed on behalf of Salem Media of Colorado, Inc. ("petitioner"), licensee of Station KRKS-FM, Channel 234C, Boulder, Colorado, proposing the reallocation of Channel 234C Boulder to Lafayette, Colorado, as that community's first local aural transmission service, and modification of its license accordingly. Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. As stated in the *Notice*, petitioner's proposal, filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, would reallocate Channel 234C from Boulder, Colorado, an urbanized area as defined by the U.S. Census, to Lafayette, an incorporated community located outside of the Boulder urbanized area. As the distance between Boulder and the petitioner's specified site at Lafayette is 45.3 kilometers (28 miles), whereas a distance of 290 kilometers (180 miles) is required pursuant to Section 73.207(b)(1) of the Commission's Rules, the petitioner's proposal is mutually exclusive with its existing authorization.¹ Additionally, the *Notice* announced that from the presently authorized site of Station KRKS-FM, 70 dBu coverage is provided to the majority of Denver, Colorado, which is also an urbanized area. If Channel 234C is reallocated to Lafayette, Station KRKS-FM could then provide a 70 dBu signal over the entire Denver urbanized area.

3. The *Notice* also announced our preliminary belief that the reallocation would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992),² as it could provide Lafayette (population

¹Coordinates at the petitioner's specified site at Lafayette are 39-40-35 and 105-29-09; coordinates at the present site of Station KRKS-FM, Boulder, are 40-04-19 and 105-21-14.

²The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).)

14,548)³ with its first local aural transmission service, and enable Station KRKS-FM to introduce a new reception service to an area of 13,206 square kilometers containing 117,109 persons. Moreover, petitioner reported that not only will Boulder retain four local transmission services,⁴ but the community will continue to receive 1 mV/m or greater service from fifteen full-service commercial FM stations and primary service (2 mV/m) during daytime hours from seventeen AM stations. Petitioner also stated that six AM stations provide primary service to less than the entire area of Boulder. Petitioner also advised that while the requested reallocation would result in a loss of service to a very minute area located northeast of Boulder (population 83,312), the loss area would occur within the predicted coverage area of more than five fulltime aural services.⁵

4. The *Notice* also recognized that while the petitioner's request contemplates the relocation of Station KRKS-FM from the Boulder urbanized area to Lafayette, a community located between the Boulder and Denver urbanized areas, a 70dBu signal is presently delivered by Station KRKS-FM over approximately 95% of the Denver urbanized area. The reallocation request would result in the provision of a 70 dBu signal by Station KRKS-FM over the entire Denver urbanized area. Therefore, based upon the present degree of coverage provided by Station KRKS-FM over Denver, we did not require the petitioner to submit a *Tuck* analysis to demonstrate that Lafayette is sufficiently independent of Denver to merit a first local service preference.⁶

5. Based upon the information presented in this proceeding, we will reallocate Channel 234C from Boulder to Lafayette, Colorado, since it is consistent with the Commission's change of community procedures. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Pursuant to the Commission's allotment priorities,⁷ Lafayette would receive its first local transmission service (priority 3), and therefore is favored over the retention of Channel 234C at Boulder (priority 4) which will continue to be served locally by at least five fulltime aural services. Additionally, the reallocation will enable petitioner to provide new reception

³Population figures given herein were taken from the 1990 U.S. Census.

⁴Those services are provided by Stations KGNU(FM), Channel 203A, KBCO-FM, Channel 247C, and full time AM Stations KBCO and KBKS.

⁵Petitioner advised that Stations KZDG(FM), Channel 223C1, Greeley, CO, KTCL(FM), Channel 227C, Fort Collins, CO, KBCO-FM, Channel 247C, Boulder, CO, KQKS(FM), Channel 282C1, Longmont, CO, and KSIR-FM, Channel 296C1, Brush, CO, are only a few of the broadcast facilities that are predicted to provide service to the 1 mV/m loss area of Station KRKS-FM that would result from a grant of the instant request.

⁶See *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). See also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

⁷See footnote 2, *supra*.

service to 117,109 persons in an area of 13,206 square kilometers. Although the reallocation will create a loss of existing reception service in an extremely small area northeast of Boulder, the populace contained therein will continue to receive reception service from a multiplicity of broadcast facilities that are predicted to provide service to Station KRKS-FM's 1 mV/m loss area.

6. In view of the above, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Salem Media of Colorado, Inc. for Station KRKS-FM to specify operation on Channel 234C at Lafayette, Colorado, in lieu of its present use at Boulder, Colorado.

7. As stated in the *Notice*, Channel 234C can be allotted to Lafayette, Colorado, in conformity with the requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site located 49.3 kilometers (30.6 miles) southwest of the community at coordinates 39-40-35 and 105-29-09.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 24, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Boulder, Colorado	247C
Lafayette, Colorado	234C

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Salem Media of Colorado, Inc. for Station KRKS-FM, IS MODIFIED to specify operation on Channel 234C at Lafayette, Colorado in lieu of Boulder, Colorado, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section

1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing an application to implement the change in community of license and/or upgrade. As a result of this proceeding, Salem Media of Colorado, Inc., licensee of Station KRKS-FM, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license at Lafayette, Colorado.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau